

Application No. 10/602,515
Filed: June 24, 2003
TC Art Unit: 3744
Confirmation No.: 8865

REMARKS

Claims 1 and 3 are pending in the application. The Examiner has rejected claims 1 and 3 under 35 U.S.C. § 103. Applicant has amended claim 1 and canceled claim 3 herein. The amendments have support within the specification such that new matter has not been presented. The amendments have particular support on page 5 of the specification and within the original drawings. Applicant submits that claim 1 should be pending on entry of the amendments herein.

Amendments to the pending claims should not be construed as acquiescence to the rejections by the Examiner and were provided solely to expedite the prosecution of the application. Applicant reserves the right to pursue the claims as originally filed in the present or a separate application(s).

Applicant also requests reconsideration and withdrawal of the rejections by the Examiner based on the amendments and the remarks provided herewith.

Claim Rejections 35 U.S.C. § 103

The Examiner has rejected claims 1 and 3 under 35 U.S.C. § 103 as obvious based on U.S. Patent No. 4,824,454 to Kondo et al. in view of U.S. Patent No. 4,592,205 to Brodbeck et al. and U.S. Patent No. 5,327,729 to Yanai et al. The Examiner has contended that Kondo et al. in combination with Brodbeck et al. and Yanai et al. disclose the claimed system. Applicant indicates that Kondo et al. do not suggest (1) a cylinder filled with liquid nitrogen for supplying liquid nitrogen to a preserving vessel, (2) a valve associated with a liquid supply pipe, (3) a pressure sensor arranged in a condensing chamber, (4) a gas discharge path or (5)

Application No. 10/602,515

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a safety valve for opening the gas discharge path as required by claim 1. Kondo et al. also do not disclose a pipe connecting between a lower part of the condensing chamber and a lower part of a preservation chamber as required by amended claim 1. The Examiner has relied on both Brodbeck et al. and Yanai et al. to overcome the deficiencies of Kondo et al.

The patent laws are clear in that obviousness cannot be established by combining the teachings of prior art without a teaching, suggestion or incentive to support such a combination. Applicant submits that neither Brodbeck et al. nor Yanai et al. provide teaching, suggestion or incentive to be combined with Kondo et al. In particular, Brodbeck et al. and Yanai et al. are entirely unrelated to preserving a specimen within a preserving vessel. Brodbeck et al. and Yanai et al. further do not disclose a pipe connecting between a lower part of a condensing chamber and a lower part of a preservation chamber as required by the claimed system. This requirement provides for nitrogen circulation in the system to assist with specimen preservation. Brodbeck et al. and Yanai et al. do not suggest such nitrogen circulation as neither reference was intended to teach the preservation of a specimen such as a biological specimen.

Brodbeck et al. disclose a low pressure cryogenic liquid delivery system. The reference does not suggest a vessel for preserving a specimen. The vessel taught by Brodbeck et al. is merely intended for liquid cryogen delivery. Yanai et al. teach an apparatus for producing liquid nitrogen. The reference also does not suggest a vessel for preserving a specimen. The chamber taught by Yanai et al. is only intended to store refrigerant.

Application No. 10/602,515

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Yanai et al. also do not teach a pressure sensor arranged in the condensing chamber.

Applicants respectfully submit that neither Brodbeck et al. nor Yanai et al. should be combined with Kondo et al. as the Examiner has asserted. The foregoing establishes a lack of any teaching, suggestion or incentive to support combination of the cited references. The patent laws also require a reference(s) to disclose each limitation of the claims under consideration to establish obviousness prima facie. The cited references in combination, however, do not disclose a pipe connecting between a lower part of a condensing chamber and a lower part of a preservation chamber as required by claim 1. Accordingly, Applicant requests that the rejections by the Examiner under 35 U.S.C. § 103 should be withdrawn.

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CONCLUSION

In view of the amendments and the remarks presented herein, reconsideration and withdrawal of each rejection and allowance of the application with all pending claims are requested.

The Examiner is also encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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